

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000758-001 DT

04/23/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
K. Waldner
Deputy

RAPHAEL NYAGONG WANI

RAPHAEL NYAGONG WANI
2500 E VAN BUREN ST WICK 3
PHOENIX AZ 85008

v.

ARIZONA DEPARTMENT OF HEALTH
SERVICES (001)

GREG D HONIG

OFFICE OF ADMINISTRATIVE
HEARINGS
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Defendant-Appellee the Arizona Department of Health Services has filed a Motion To Dismiss. For the following reasons, this Court grants that Motion.

I. FACTUAL BACKGROUND.

According to Defendant-Appellee the Arizona Department of Health Services (AzDHS), it issued its final Administrative Decision on August 8, 2011. According to Plaintiff-Appellant Raphael N. Wani (Wani), AzDHS issued its final Administrative Decision on August 9, 2011. On November 28, 2011, Wani filed a document requesting judicial review of the administrative decision, which this Court considers to be Wani's Complaint for Review of Administrative Decision. On February 3, 2012, AzDHS filed a Motion To Dismiss, contending Wani did not file his Complaint in a timely manner. On February 8, 2012, Wani sent to this Court a response to the Motion To Dismiss filed by AzDHS, and on February 16, 2012, AzDHS filed a Reply.

II. DISCUSSION.

AzDHS contends this Court does not have jurisdiction in this appeal. The applicable Arizona statute provides as follows:

An action to review a final administrative decision shall be commenced by filing a complaint within 35 days from the date when a copy of the decision sought to be reviewed is served upon the party affected. . . . Service is complete on personal service or 5 days after the date that the final administrative decision is mailed to the party's last known address.

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A.R.S. § 12-904(A). Because the final administrative decision in this matter was issued August 9, 2011, at the latest, the Complaint had to be filed 40 days later, which was September 18, 2011, and because that was a Sunday, the Complaint would have had to have been filed by Monday, September 19, 2011.

In the present matter, Wani filed his Complaint on November 28, 2011. The Arizona courts have held the time limits prescribed for an appeal from an administrative agency are jurisdictional. *Arizona Corp. Comm'n v. Catalina Foothills Estates*, 78 Ariz. 245, 250, 278 P.2d 427, 430 (1954); *Bolser Ent. Inc. v. Arizona R.O.C.*, 213 Ariz. 110, 139 P.3d 1286, ¶ 16 (Ct. App. 2006); *Guminski v. Arizona St. Vet. Med. Exam. Bd.*, 201 Ariz. 180, 33 P.3d 514, ¶ 8 (Ct. App. 2001); *Thielking v. Kirschner*, 176 Ariz. 154, 156, 859 P.2d 777, 779 (Ct. App. 1993); *Smith v. Arizona D.O.C.*, 135 Ariz. 160, 162, 659 P.2d 1305, 1307 (Ct. App. 1982); *State ex rel. Dandoy v. City of Phoenix*, 133 Ariz. 334, 337, 651 P.2d 862, 865 (Ct. App. 1982); *Pesqueira v. Pima County Assessor*, 133 Ariz. 255, 257, 650 P.2d 1237, 1239 (Ct. App. 1982); *Hurst v. Bisbee U.S.D.*, 125 Ariz. 72, 74, 607 P.2d 391, 393 (Ct. App. 1979); *Arizona D.E.S. v. Holland*, 120 Ariz. 371, 372, 586 P.2d 216, 217 (Ct. App. 1978). This Court therefore concludes, because Wani filed his Complaint beyond the 40-day period allowed for administrative appeals, this Court does not have jurisdiction and must dismiss this matter.

III. CONCLUSION.

Because Wani did not file his Complaint within the time limit provided by statute, this Court does not have jurisdiction and must dismiss this matter. This Court further determines there is no just reason to delay entry of judgment.

IT IS THEREFORE ORDERED granting the Motion To Dismiss filed by the Arizona Department of Health Services.

IT IS FURTHER ORDERED dismissing Cause Number LC2011-000758.

IT IS FURTHER ORDERED remanding this matter to the Arizona Department of Health Services.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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